IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

BRANDON DAWUAN WHEELER,
Appellant.

No. 2 CA-CR 2019-0230
Filed June 26, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20183652001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Brandon Wheeler was convicted of theft of a means of transportation, and the trial court sentenced him to a prison term of eight years. On appeal, Wheeler argues the court erred by denying his motion for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P.[1] For the following reasons, we affirm Wheeler's conviction and sentence.

Factual and Procedural Background

¶2 On August 7, 2018, the Arizona vehicle theft task force received a report that a Chevy Astro van had been stolen. About a week later, a detective located the stolen van at a park in central Tucson and Sergeant David Ball and Detective Kasey Ball were assigned to watch it in an "attempt to arrest the suspect." They observed "a black male seated in the driver's seat" and "a white female seated in the passenger seat." The officers followed the van as it left the park about twenty minutes later. While following the van, Sergeant Ball noticed that it "slowed down and made a U-turn" near a patrol car, with its emergency lights on, at an unrelated traffic stop. It appeared as though the van drove "through the neighborhood" to "ma[ke its] way around the patrol car," avoiding the "most direct route" to a nearby apartment complex where it eventually parked.

¶3 At the apartment complex, Sergeant Ball parked in the southern lot, while Detective Ball and a Tucson Police Department (TPD) Canine Officer Ryan Azuelo parked their vehicles in the northern lot near where the van was parked. Detective Ball saw the same woman sitting in

[1]Wheeler also contends "the charge of burglary should have also been dismissed because there was no evidence [he] intended to commit any other felony in the [vehicle]." But because Wheeler was acquitted of the burglary charge, we need not address it on appeal. *See State v. LeMaster*, 137 Ariz. 159, 165 (App. 1983) (explaining when jury acquits defendant on issue we need not address it on appeal).

the passenger seat and "a black male walk[ing] from the south parking lot of the apartment complex . . . towards the van" wearing "[b]lue denim overalls." The man approached the van, looked "under the hood," and "walked around . . . the back hatch." Detective Ball believed the man "matched the physical description" of the man he had seen driving the van earlier. When Sergeant Ball, Detective Ball, and Officer Azuelo activated their emergency lights, the man immediately "took off running down the alley," and they all began "running after him," identifying themselves as police officers, and yelling for him to stop. The man "jumped [a] wall, went over [a] barbed-wire fence, and then continued to run in a southwest direction."

¶4 The officers "set up a perimeter" and conducted a "ground search" for the man. During the search, Officer Azuelo found the discarded blue jean overalls the man had been wearing, and the man later identified as Wheeler, "covered in sweat," was found in an adjacent apartment building laundry room. Although neither Sergeant Ball nor Officer Azuelo could positively identify Wheeler as the man who had jumped the fence, both "noticed fresh cuts to his forearms" consistent with climbing over a barbed-wire fence. Wheeler was arrested, and a grand jury indicted him for theft of a means of transportation and burglary.

¶5 At the conclusion of the state's case at trial, Wheeler moved for a judgment of acquittal pursuant to Rule 20. The trial court denied the motion, and the jury found him guilty of theft of a means of transportation, but not guilty of burglary. Wheeler was sentenced as described above, and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21, 13-4031, and 13-4033(A)(1).

Discussion

¶6 Wheeler contends the trial court erred by denying his Rule 20 motion for acquittal because there was insufficient evidence "to allow a reasonable juror to conclude all elements of the crime of theft of [a] means of transportation were met beyond a reasonable doubt." We review de novo a court's denial of a Rule 20 motion. *See State v. Goudeau*, 239 Ariz. 421, ¶ 168 (2016). We view the evidence in the light most favorable to upholding the court's ruling and determine whether, based on the evidence presented, "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, ¶ 16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). "[T]he controlling question is solely whether the record contains 'substantial evidence to warrant a conviction.'" *Id.* ¶ 14 (quoting Ariz. R. Crim. P. 20(a)).

"Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Rivera*, 226 Ariz. 325, ¶ 3 (App. 2011) (quoting *State v. Spears*, 184 Ariz. 277, 290 (1996)). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶7 To support a conviction for theft of a means of transportation under A.R.S. § 13-1814(A)(5), the state must prove a defendant, without lawful authority, knowingly "[c]ontrols another person's means of transportation knowing or having reason to know that the property is stolen." "'Knowingly' means . . . that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists" and "does not require any knowledge of the unlawfulness of the act or omission." A.R.S. § 13-105(10)(b). And "'[c]ontrol' . . . means to act so as to exclude others from using their property except on the defendant's own terms." A.R.S. § 13-1801(A)(2).

¶8 On appeal, Wheeler maintains that the state failed "to produce evidence sufficient to establish that [he] controlled the van and that [he] had actual or constructive knowledge that the van was stolen property." We disagree.

¶9 A defendant's "mental state will rarely be provable by direct evidence and the jury will usually have to infer it from his behaviors and other circumstances surrounding the event." *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996); *see also State v. Tison*, 129 Ariz. 546, 554-55 (1981) (lacking direct evidence does not preclude a finding of guilt as a criminal conviction may rest solely on circumstantial evidence). For example, "[t]he mere possession of stolen goods by a defendant does not in and of itself establish guilty knowledge," but possession coupled with "false, evasive or contradictory statements by the accused as to his possession of the property" may establish a finding of guilty knowledge. *See State v. Hull*, 60 Ariz. 124, 128 (1942). Additionally, a defendant's attempt to elude officers and his demeanor upon being stopped may suggest consciousness of wrongdoing. *See State v. Hunter*, 136 Ariz. 45, 48-49 (1983). And, "although merely leaving the scene of a crime is not evidence of flight, '[r]unning from the scene of a crime, rather than walking away, may provide evidence of a guilty conscience . . . .'" *State v. Murray*, 247 Ariz. 583, ¶ 30 (App. 2019) (quoting *State v. Lujan*, 124 Ariz. 365, 371 (1979)).

¶10 Both Sergeant Ball and Detective Ball testified that they saw a man who matched Wheeler's description sitting in and later driving the stolen van during their surveillance. *See* § 13-1801(A)(2). Detective Ball also

testified that he watched Wheeler intentionally keep "his head . . . down" while in the driver's seat, and Sergeant Ball noticed Wheeler avoid a patrol car by taking an indirect route to the apartment building where he eventually parked. *See Hunter*, 136 Ariz. at 48-49; *Hull*, 60 Ariz. at 128. Detective Ball further explained that when he attempted to confront Wheeler, he "took off running" and jumped a "4-foot block wall with a gap in-between, and then about a 6-foot chain link fence with barbed wire across the top of it" despite Detective Ball identifying himself and yelling to stop. *See Hunter*, 136 Ariz. at 48-49; *Murray*, 247 Ariz. 583, ¶ 30 (quoting *Lujan*, 124 Ariz. at 371). And during the perimeter search, Officer Azuelo testified that he found the man's blue jean overalls as well as Wheeler, who matched the description of the man driving the vehicle, in an adjacent apartment building's laundry room "sweaty" with "fresh cuts to his forearms" that were consistent with barbed-wire cuts.

¶11 Additionally, another detective testified that he found documents containing Wheeler's name in two separate locations within the stolen van, in the "middle-row passenger compartment" in a backpack and in the "rear pocket of the front driver's seat." The forensic scientist also testified and explained that Wheeler's DNA was a "major component" of the DNA found on the stolen van's steering wheel. Wheeler also admitted to being in the stolen van in the days before he was apprehended, sitting in the driver's seat, and further explained that when he was in the van he did not "know for sure" who owned it. § 13-105(10)(b); *see also Hull*, 60 Ariz. 124 at 128. These facts would permit the jury to reasonably infer that Wheeler had driven, and therefore controlled, the van. Accordingly, the state presented substantial evidence to support a conviction pursuant to § 13-1814(A)(5), *see West*, 226 Ariz. 559, ¶ 14, and the trial court did not abuse its discretion in denying Wheeler's Rule 20 motion. *Rivera*, 226 Ariz. 325, ¶ 3.

Disposition

¶12 For the reasons stated above, we affirm Wheeler's conviction and sentence.